CF0000061971

Division Bench (Criminal)

समक्ष:-माननीय उच्च न्यायालय म०प्र० जबलपुर

अपराधिक प्रकरण अपील क्रमांक:-------52-------/१९

सन्तू उर्फ सन्तराम पिता गोपेलाल ततनामी, उम्र ३१ वर्ष,
साकिन-ग्राम माढरखुर्द थाना सिमगा,
जिला रायपुर (म०प्र०)----------अपीलार्थी/अभियुक्त
(जेल में)

3 40
File 8-1-99
by Shri Umesh Gupta
Advocate

विरूध्द

मध्यप्रदेश शासन ----------उत्तरदाता

Rtn. A.R.

निर्णयदिनांक ६/११/९८ वाद संक्र०:-३६९/९७

न्यायालय प्रथम अपर सत्र न्यायालय रायपुर, दण्ड अन्तर्गत धारा ३०२ भा०दं०वि० तः आजन्म कारावास से दण्डित ।

दण्डित अपील अन्तर्गत ३७४(२) दं०प्र०सं० १९७३

Certified Copy of Petition With Annexure
6/11/98 CLERK
O/o. Advocate General
M. P. HIGH COURT

धारा 302 आजीवन कारावास एवं 5000/- के अर्थ दंड से दण्डित अर्थ दंड अदा नहीं करने पर एक वर्ष का सश्रम कारावास अतिरिक्त सजा भुगताई जावे। —लोमुपा 23/11/98

अपील

आदेश माननीय न्यायालय प्रथम अपर सत्र न्यायाधीश जिला रायपुर द्वारा प्रकरण क्र० ३६९/९७ धारा ३०२ भा०दं०वि० के तहत अपराध में आजीवन कारावास एवं ५,०००/- पांच हजार रुपये अर्थ दण्ड से दण्डित किया गया है । अर्थ दंड अदा नहीं करने पर एक वर्ष अतिरिक्त सश्रम कारावास भुगताया जाए

प्रकरण सारांश —लोमुपा 23/11/98

यह कि अभियोजन का प्रकरण संक्षिप्त में इस प्रकार है ।

घटना दिनांक २३/६/९७ को अथवा उसके आसपास टीह्पारा सिमगा वार्ड ८ में गोपे लाल की साशय अथवा जानबूझकर टंगिया से मार कर हत्या करने के कथित अपराध के संबंध में भारतीय दण्ड संहिता की धारा ३०२ का आरोप है ।

पेज २ पर

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Sunil Kumar Sinha, JJ.

19-9-2006

Mr. Anand Mohan Tiwari, counsel for the appellant.

Mr. U.K.S. Chandel, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 6-11-1998 passed by the 1st Additional Sessions Judge, Baloda Bazaar, in Sessions Trial No.369/97, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the murder of his father namely, Gofelal, sentenced him to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year.

The case of the prosecution, in brief, is that on 23-6-1997 at about 3 p.m. the accused/appellant Santu @ Sant Kumar attacked his father Gofelal with an axe. Before that, the accused/appellant was quarrelling with his father and asking him to transfer the agricultural land in his name for which his father was not ready, therefore, the accused assaulted his father with the axe as a result of which Gofelal received 19 injuries. When the accused was running away from the house carrying axe in his hand, Sundar @ Surendra Kumar, land lord of the deceased, saw the accused and thereafter, Surendra Kumar along with Santosh Awasthi (PW-6), Constable of Police Station: Simga, chased the accused. The accused was caught in front of the Tehsil Office having axe in his hand and he

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was brought to the Police Station. The matter was reported by Sundar @ Sundera Kumar (PW-7) on which the first information report Ex.P-3-A was registered against the accused/appellant for the commission of offence under Section 302 of the I.P.C. The accused was brought to the Police Station by Surendra Kumar (PW-7) & Santosh Awasthi (PW-6), Constable, and in their presence the weapon of offence, the axe, stained with blood was taken into possession under Ex.P-4. The Investigating Officer left for the scene of occurrence and took into possession bloodstained soil and plain soil from the place of occurrence under Ex.P-5 and prepared the site plan (Ex.P-7) of the place of occurrence. The Panchnama (Ex.P-2) of the body of Gofelal was prepared by the Investigating Officer after giving notice Ex.P-1 to the Panchas. The body of Gofelal was sent for post-mortem examination to Primary Health Centre, Simga, where Dr. N.P. Tamrakar (PW-4) conducted post-mortem and prepared the post-mortem report (Ex.P-8) in which he opined that the cause of death is syncope, shock and haemorrhage as a result of multiple injuries and injuries to the vital organs i.e. brain & lungs.

After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Baloda Bazaar, who in turn committed the case to the Sessions Judge, Raipur, from where, learned 1st Additional Sessions Judge, Baloda Bazaar, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined eleven witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor, counsel for the accused and

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..... **विरुद्ध** .....

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perusal of the record, convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. Anand Mohan Tiwari, learned counsel for the appellant and Mr. U.K.S. Chandel, learned Panel Lawyer on behalf of the State/ respondent.

The homicidal death of Gofelal has not been disputed by learned counsel for the appellant. Apart from that, Dr. N.P. Tamrakar (PW-4), who has conducted post-mortem on the body of deceased Gofelal, has stated in his evidence that on 24-6-1997 he was on duty in Primary Health Centre, Simga, on that day he conducted post-mortem on the body of Gofelal and found in all 19 injuries viz., incised & punctured wounds, there was fracture of skull, ribs were also fractured and there was incised wound on right & left lung also. The cause of death was syncope and haemorrhage on account of multiple injuries to vital organs. The death was homicidal in nature. Therefore, it is established that the death of Gofel was homicidal in nature.

As far as involvement of the accused in the crime in question is concerned, learned counsel for the appellant argued that there is no evidence connecting the accused with the commission of murder of his father.

On the other hand, learned Panel Lawyer appearing for the State/ respondent supported the judgment of the trial Court.

Having heard learned counsel for the parties, we have perused the judgment of the trial Court and the evidence available on record. In this case, there is no direct and ocular evidence. Whole case rests on the circumstantial evidence. In order to rest conviction based on the circumstantial evidence, as

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per the settled law as held by the Hon'ble Apex Court in the matter of Dhananjoy Chatterjee Vs. State of W.B. reported in (1994) 2 SCC 220:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

In this case, conviction is based on the following grounds:

i) the accused had a strong motive to commit the crime i.e. the accused was regularly asking his father to transfer the agricultural land in his name and for that purpose he used to quarrel with his father; and

ii) immediately after the commission of crime, the accused was seen by Surendra Kumar (PW-7) running away from his house and he was caught with the weapon of offence, axe in front of the Tehsil building.

As far as the first circumstance is concerned, Surendra Kumar (PW-7), who was the land lord of deceased Gofelal, has stated in his evidence that on the fateful day at about 10 a.m. he went to his field, from there he returned at

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about 1 p.m. and he saw that the accused was running away from his house. He went to the house of Gofelal and saw that Gofelal was lying flat in the pool of blood. Thereafter, he went to the Police Station and lodged the report (Ex.P-3-A). Surendra Kumar (PW-7) has further stated in his evidence that the Police seized the weapon of offence axe stained with blood in his presence under Ex.P-4. In para 4 of his evidence he has stated that the accused used to quarrel with his father on the ground that his father should transfer the land in his name, otherwise, after the death of his father, sister of the accused will demand share. On the day of the incident, the accused came in the house of the deceased. Gofelal informed him that the accused is quarreling with him for transfer of his land in his name, if he will transfer the land in the name of the accused, then he will sell the same. PW-7 advised Gofelal to transfer some land. He saw the accused quarreling with his father at about 1.30 p.m. He advised Gofelal that if the accused is quarreling with him, then he should go and lodge report in the Police Station. Thereafter, PW-7 saw the accused running away carrying axe in his hand and the axe & clothes of the accused were stained with blood. The Police arrested the accused in his presence. In cross-examination also, this witness (PW-7) has stated the same thing and said that Gofelal came and informed him that his son is quarreling with him and asking him to transfer the land in his name.

Inadvertently PW-7 has been marked twice, therefore, the witnesses are being referred as marked in the record. Munjedas (PW-7), brother of the deceased and uncle of the accused, has also stated in his evidence that there was a land of about 10-12 acres in the name of his brother Gofelal and the accused used to ask Gofelal to transfer that land in his name and he used to

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quarrel with Gotelal. For the purpose of agricultural activities as and when the deceased used to purchase cattle, the accused used to sell those cattle. The dispute regarding the land continued for 2-4 years. The deceased used to say that he will transfer the land in the name of his grandson and he will not transfer in the name of the accused. The accused was not doing any work and he used to take money from his father frequently, that is why the deceased was angry with the accused. At the time of the incident, the accused was residing in Village: Madhar.

Therefore, the evidence of PW-7 Surendra Kumar, landlord of the deceased, has been corroborated by the evidence of PW-7 Munjedas, brother of the deceased and uncle of the accused. Both of them have stated in their evidence that the accused used to quarrel with the deceased on the ground that the deceased should transfer the land in his name. In cross-examination of these two witnesses, defence has not been able to elicit any circumstance, which makes the evidence of these witnesses unreliable and untrustworthy. PW-7 Munjedas is the real uncle of the accused and he had no reason to implicate his nephew in a false case. Similarly, PW-7 Surendra Kumar, other witness, is an independent witness in whose house the deceased used to live and for him also there was no reason to implicate the accused in a false case. In the circumstances, in view of the evidence of these two witnesses, the motive of the accused stands established that the accused had a strong motive to commit the crime in question for the reason that he used to ask the deceased to transfer the land in his name, but the deceased never obliged him. On the day of the incident also, the accused quarrelled with his father. The deceased informed PW-7 Surendra Kumar that the accused was quarrelling with him. Surendra

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Kumar advised the deceased to go and report the matter to the Police. In the circumstances, we are of the considered opinion that the accused had a strong motive to commit the crime in question.

As far as the second circumstance is concerned, Surendra Kumar (PW-7), in whose house the deceased used to reside as a tenant, has categorically stated in his evidence that when he returned from the field, the deceased came to him and informed him that the accused is quarreling with him and asking him to transfer the land, on which he advised the deceased to go and report the matter to the Police. After some time, he saw the accused running away towards the forest, carrying axe in his hand, and clothes of the accused were stained with blood. He reported the matter to the Police. As per the evidence of Santosh Awasthi (PW-6), who was the Constable in Police Station: Simga, has stated in his evidence that Surendra Kumar came to the Police Station and informed that Santu @ Sant Kumar has committed the murder of his father and ran away towards the forest carrying axe in his hand, on which he along with Shyamlal went towards the forest, they saw the accused in front of Tehsil Office going towards the forest and he was carrying axe stained with blood. They caught hold of him and brought him to the Police Station. Therefore, in view of the evidence of Surendra Kumar, who saw the accused going towards the forest carrying axe in his hand which has been corroborated by the evidence of Santosh Awasthi who along with Surendra Kumar had caught the accused in front of the Tehsil Office carrying the axe, the axe in question was also recovered from the accused, the accused was seen carrying the axe in his hand stained with blood immediately after the commission of crime and before that, the accused was quarrelling with his father in his house, as such, it is established that the

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accused was last seen near the house where Gotelal was murdered. Before that, the accused was quarreling with his father and as has been held in the earlier part of this judgment that there was a strong motive for the accused to commit the murder, as such in view of the above both the points stand established.

Both these circumstances unerringly point towards the involvement of the accused in the crime in question and there is nothing on record, which shows that except the accused nobody else was the author of the crime in question. Therefore, based on these two circumstances the prosecution has been able to establish involvement of the accused in committing the murder of his father. For the foregoing reasons, we do not find any illegality or infirmity in the finding of the trial Court.

In the result, the appeal is devoid of merit, same is liable to be dismissed and it is accordingly, dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

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26/9/06